

The Administrative Law Judge denied claimant's request for additional medical benefits and to review and modify the award previously entered in this proceeding on June 2, 1994. In addition, the Judge ordered the respondent and its insurance carrier to pay claimant's attorney fees in the sum of \$2,000 for services rendered in this post-award proceeding. The claimant requested the Appeals Board to review the requests for review

and modification and additional medical care. The respondent and insurance carrier requested the Appeals Board to review the findings related to claimant's entitlement to attorney fees and the assessment of administrative expense. Also, the respondent and insurance carrier request the Appeals Board to order the claimant to pay their attorney fees. Those are the issues now before this Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

For the reasons expressed below, the findings of the Administrative Law Judge should be affirmed.

(1) The findings and conclusions of the Administrative Law Judge are quite detailed, appropriate, supported by the record, and are hereby adopted by the Appeals Board for purposes of this review. Claimant returned to work for the respondent earning comparable wages after recovering from his July 8, 1993 work-related accident. After returning to work, claimant displayed a total disregard of the company's rules and often showed up late for work when he showed up at all. After stretching the patience of respondent to the limit, claimant was terminated. Claimant's lack of good-faith effort to perform his job in a proper manner is well documented. Were it not for claimant's improper conduct, the Appeals Board finds he could have continued in respondent's employment for an indefinite period earning a comparable wage.

The Appeals Board finds claimant's inappropriate conduct which resulted in his termination is not a basis for overcoming the presumption of no work disability as contained in K.S.A. 44-510e. See Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), rev. denied 257 Kan. ____ (1995).

(2) The Administrative Law Judge awarded claimant's attorney \$500 in fees for services rendered in connection with the request for additional medical benefits and \$1500 in connection with the request for review and modification of the award of permanent partial general disability benefits. Claimant contends the fee awarded by the Administrative Law Judge is too low. The Appeals Board disagrees and finds that these amounts are reasonable in light of the issues involved. The Administrative Law Judge is an expert in determining the reasonableness of attorney fees relating to those matters before him. See City of Wichita v. B G Products, Inc., 252 Kan. 367, 845 P.2d 649 (1993).

Respondent requests the Appeals Board to order the claimant to pay their attorney fees and contends claimant's requests for additional medical benefits and review and modification are frivolous. The respondent and insurance carrier cite K.S.A. 44-536a to support their position. In this instance, respondent's request is denied. Although claimant's arguments were not persuasive, the Appeals Board does not find claimant's requests were spurious. Because his employment status had changed, there was a question whether claimant was entitled to an increase in permanent partial disability benefits.

(3) The Appeals Board adopts the Order of the Administrative Law Judge assessing the administrative costs of this proceeding against the respondent and insurance carrier. The Administrative Law Judge is empowered to make this assessment against any party to the

proceedings as provided by K.S.A. 44-555. The Appeals Board finds no compelling reason to disturb that order.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Steven J. Howard entered in this proceeding on February 14, 1995, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Keith L. Mark, Mission, KS
Michael W. Downing, Kansas City, MO
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director